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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,634	06/19/2001	Paul E. Newson	MSFT-0229/154793.1	2651

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EXAMINER

HARRELL, ROBERT B

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 05/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/884,634

Applicant(s)

NEWSON ET AL.

Examiner

Robert B. Harrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2001 et al.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-29 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 19 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20010619
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: see attached Office Action.

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1. Claims 1-29 are presented for examination.
2. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks TM, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims. Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
3. Each of the claimed features must be shown in the figures or the features must be cancelled.
4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 10-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a nonfunctional data structure. When nonfunctional descriptive material is recorded on some computer-readable medium, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make it statutory. Such a result would exalt form over substance. (MPEP 2106).

6. The following is a quotation of the second paragraph of 35 U.S.C 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-29 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

- a) "the first and second computing devices"--claim 1 [*suggest using "the first device computing device and the second computing device" as the number of first and second computers in each set is not clear*], also claim 9 (line 4);
- b) "said acts"- claim 3 (line 5);
- c) "the respective created packets"-claim 3 (last line);
- d) "said first and second packets"—claim 4 (line 3)[*see (a) above*];
- e) "said act"- claims 6 and 8 (line 2);

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- f) "the order"—claim 10 (line 6);
- g) "the presence"—claim 10 (line 8);
- h) "said data structure"—claims 11 and 15 (lines 1-2);
- i) "the next packet"—claim 14 (lines 3-4);
- k) "said one or more masks"—claim 16 (line 2);
- k) "the acts"—claim 17 (line 2)[*suggest deleting "the"[*];
- l) "the respective"—claim 17 (lines 6-7);
- m) "the m-th"—claim 18 (line 3);
- n) "the acts"—claim 22 (line 3);
- o) "the respective"—claim 22 (lines 7-8);
- p) "said first and second packets"—claim 23 (lines 6-7);
- q) "said act"—claim 25 (line 2);
- r) "said first and second packets"—claim 26 (lines 8-9);
- s) "said first package"—claim 27 (lines 17-18);
- t) "said first packet"—claim 27 (line 22), claim 28 (lines 1 and 7), and claim 29 (lines 6 and 7).

8. As to 7 (a-t) above, these are but a few examples of numerous cases where clear antecedent bases are lacking and not an exhaustive recital. Any other term(s) or phrase(s) overlooked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent bases also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent bases for term(s) or phrase(s) which relied upon the introduced term. Numerical antecedent bases are also lacking such as in claims 6 and 8 (line 6 "a first of said bits" [is there a second?]) same for claim 27, is there a second packet/package?) Failure to correct all existing cases where clear antecedent bases is/are lacking can be viewed as non-responsive.

9. Per claim 1 (last two lines), it cannot be clearly ascertained if the second packet is sent only if a second number is exceeded or if the second packet is sent regardless of any condition. Same holds for claim 9 and others of this nature.

10. Per claim 5, it cannot be clearly ascertained if "data", in line 2, is that of claim 1 (line 1) same for claim 7 and other like claims of this nature.

11. The claims stand allowable over the art of record because the art of record fails to teach or remotely suggest the invention as currently defined by the claims.

12. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The

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examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack B. Harvey, can be reached on (571) 272-3896. The fax phone number for all papers is (703) 872-9306.

15. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

A handwritten signature in black ink, appearing to read 'R. B. Harrell', is positioned above the printed name.

ROBERT B. HARRELL
PRIMARY EXAMINER
GROUP 2142